

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEVEN MARTIN ADAMS,

Plaintiff,

CASE NO. 1:08-CV-1192

v.

HON. ROBERT J. JONKER

CALHOUN COUNTY CORRECTIONAL
FACILITY, et al.,

Defendants.

ORDER APPROVING REPORT AND RECOMMENDATION

The Court has reviewed Magistrate Judge Brenneman's Report and Recommendation in this matter (docket # 29) and Plaintiff Adams's Objections to the Report and Recommendation (docket # 30). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997).

Specifically, the Rules provide that:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's objections. After its review, the Court finds that Magistrate Judge Brenneman's Report and Recommendation is factually sound and legally correct.

In his Report and Recommendation, Magistrate Judge Brenneman recommends that Defendant Tom Johnson's Motion for Summary Judgment (docket # 20) be granted. In his objections, Mr. Adams explicitly requests that the Court disregard the Report and Recommendation, but does not address the Report and Recommendation itself. (Obj. to Magistrate Judge's Report and Recommendation, docket # 30, at 3.) Rather, he reiterates allegations raised in his complaint. (*Id.* at 2.) Mr. Adams also describes the concept of deliberate indifference to serious medical needs and speculates about what might constitute knowledge of a serious medical need. (*Id.* at 2-3.) Mr. Adams presents no reason for the Court to reject any aspect of the Magistrate Judge's Report and Recommendation, nor does the Court see any reason to do so. On the contrary, the Report and Recommendation reflects a careful review of the record and proper application of the law.

The Court notes that embedded in Mr. Adams's objections is a request for permission to amend the complaint to add one or more new defendants (*Id.* at 3). The request is untimely. With the grant of summary judgment to Mr. Johnson, the only defendant remaining in the case is an unknown nurse who has never been served. (*See* Order to Show Cause dated February 17, 2010, docket # 32.) Mr. Adams does not identify even a single defendant he wishes to add or offer any grounds for adding a new defendant. Moreover, justice does not require that the Court give permission to amend the complaint. *See* FED. R. CIV. P. 15(a)(2). No matter how many new defendants Mr. Adams were to add, he could not prevail. Mr. Adams has not alleged deliberate

indifference, but at most mere negligence, in connection with his medical care, and that is insufficient to support a claim under the Eighth Amendment. *See, e.g., Comstock v. McCrary*, 273 F.3d 693, 703 (6th Cir. 2001) (“[A] plaintiff alleging deliberate indifference must show more than negligence”). For all these reasons, the Court will deny Mr. Adams’s request for permission to amend his complaint.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (docket # 29) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that Defendant Tom Johnson’s Motion for Summary Judgment (docket # 20) is **GRANTED**. Defendant Johnson is terminated from the case.

IT IS FURTHER ORDERED that Plaintiff’s request for permission to amend his complaint (docket # 30) is **DENIED**.

Dated: March 9, 2010

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE